IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1180 OF 2005

The Allahabad Bank	...	Petitioners
Vs.		
Bachubhai Arjun Chauhan & Ors.	...	Respondents

Mr. Arif Bookwalla i/b. M/s. Shukla & Shukla for the petitioners.

Mr. P.K. Dhakephalkar for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND MARCH, 2005.

P.C.:-

1. Admit.

2. Learned counsel for the respondents waives service. By consent of the parties, taken up for final hearing forthwith.

3. In this petition, the original defendant - Allahabad Bank has challenged the order dated 18/1/2005 passed by the Division Bench of the Small Causes Court on Interim Notice No.5342 of 2004, which was taken out by the defendant-bank in Appeal (St.) No.3370 of 2004 for stay of the execution of the order dated 4/10/2004 passed by the trial court in Misc. Notice No.250 of 2004 in T.E.

& R. Suit No.124/156 of 2000. That order directed the defendants to pay the mesne profits to the plaintiffs. By the impugned order the defendant-bank is directed to deposit the entire amount of mesne profits till the date of filing of the appeal on or before 31/01/2005 and further to go on depositing the accruing mesne profits from the date of filing of the appeal till the disposal of the appeal on or before 10th day of each month.

4. I have heard Mr. Bookwalla, the learned counsel appearing for the petitioners and Mr. Dhakephalkar, the learned counsel appearing for the respondents. Mr. Bookwalla submitted that inasmuch as the possession has been handed over on 20/7/2004, the order directing the defendant-bank to deposit the accruing mesne profits from the date of filing of the appeal till disposal of the appeal is illegal.

5. In my opinion, in the facts and circumstances of the case, since the possession has already been handed over by the defendant-bank, the defendants cannot be asked to deposit the accruing mesne profits. That order needs to be set aside. However, the defendant-bank will have to deposit the amount of mesne profits till the date of handing over the possession of the suit premises i.e. 20/7/2004. Hence, I pass the following order.

6. The impugned order directing the defendant-bank to deposit the accruing mesne profits from the date of

filing of the appeal till the disposal of the appeal is set aside. The defendant-bank shall however, deposit the entire amount of mesne profits till the date of handing over the possession of the suit premises i.e. 20/7/2004 in the trial court within a period of two weeks from today. The Registrar of the Small Causes Court is directed to invest the said amount in any nationalised bank except the defendant-bank on usual terms and conditions.

7. Writ petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)